

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, et al.,</p> <p>Debtors.</p>	<p>PROMESA Title III</p> <p>No. 17 BK 3283-LTS (Jointly Administered)</p>
<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>PUERTO RICO SALES TAX FINANCING CORPORATION (“COFINA”),</p> <p>Debtor.</p>	<p>PROMESA Title III</p> <p>No. 17 BK 3284-LTS (This court filing relates only to No. 17 BK 3284-LTS.)</p>
<p>THE BANK OF NEW YORK MELLON, as Trustee,</p> <p>Plaintiff,</p> <p>v.</p> <p>PUERTO RICO SALES TAX FINANCING CORPORATION (“COFINA”); WHITEBOX MULTI- STRATEGY PARTNERS, L.P.; WHITEBOX ASYMMETRIC PARTNERS, L.P.; WHITEBOX INSTITUTIONAL PARTNERS, L.P.; PANDORA SELECT PARTNERS, L.P.; AMBAC ASSURANCE CORPORATION; FRANKLIN ADVISERS, INC., and CEDE & CO., as nominee for The Depository Trust Company,</p> <p>Defendants.</p>	<p>Adv. Proc. No. 17-133-LTS</p>

STIPULATION AND ORDER

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), through its undersigned counsel, and Ambac Assurance Corporation, the COFINA Senior Bondholders’ Coalition, National Public Finance Guarantee Corporation, and Whitebox

Asymmetric Partners, L.P. and certain affiliated entities (collectively, the “COFINA Senior Parties”), through their respective undersigned counsel, stipulate and agree as follows:

RECITALS

WHEREAS, on May 16, 2017, the Bank of New York Mellon (“BNYM”) filed the *Adversary Complaint Filed By The Bank of New York Mellon, as Trustee, for Interpleader and Declaratory Relief* (Dkt. No. 1);

WHEREAS, on June 6, 2017, the Court entered the Scheduling Order (Dkt. No. 154), which provided for, among other things, document and deposition discovery;

WHEREAS, pursuant to the Scheduling Order, the COFINA Senior Parties served discovery requests and subpoenas and/or notices of deposition on a number of parties, including a subpoena on the Oversight Board on July 24, 2017 (the “Subpoena”);

WHEREAS, on August 7, 2017, the Oversight Board served its Responses and Objections to the Subpoena, objecting to the Subpoena and declining to designate or produce any witnesses on any of the requested topics;

WHEREAS, on August 11, 2017, the COFINA Senior Parties filed their *Urgent Motion Regarding Discovery Disputes and for a Pretrial Hearing Pursuant to Fed. R. Bankr. P. 7016* (the “Urgent Motion”) (Dkt. No. 315), in which they sought, among other things, to compel the deposition of a representative of the Oversight Board;

WHEREAS, the Court heard oral argument on the Urgent Motion at a hearing held on August 22, 2017 (“August 22 Hearing”);

WHEREAS, during the August 22 Hearing, the Court stated that “the Oversight Board’s position needs to be put in the record”; and

WHEREAS, during the August 22 Hearing, the Court encouraged the parties to attempt to resolve the dispute by stipulation, but stated that it would rule on the Urgent Motion in the absence of such an agreement;

AGREEMENT

WHEREFORE, IT IS HEREBY STIPULATED AND AGREED, subject to the Court's approval:

A. The COFINA Senior Parties agree to withdraw that portion of the Urgent Motion that seeks to compel the deposition testimony of an Oversight Board representative in the above-captioned adversary proceeding.

B. In exchange for the COFINA Senior Parties' withdrawal of the Urgent Motion as set forth in the preceding paragraph A, the Oversight Board submits the statement of facts attached hereto as Exhibit A, which statement shall be binding on the Oversight Board.

IT IS FURTHER STIPULATED AND AGREED that this Stipulation may be signed in counterparts and that email or facsimile copies shall be deemed originals for all purposes.

Dated: September 25, 2017

AGREED TO:

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ORDER

AND NOW, this 26 day of September, 2017, upon agreement of the parties it is

ORDERED that the foregoing is hereby approved.

/ s / Judith Gail Dein

Judith Gail Dein

United States Magistrate Judge

Exhibit A

Statement of Facts of Financial Oversight and Management Board for Puerto Rico

1. The portion of the sales-and-use taxes transferred to COFINA each Fiscal Year (the “Dedicated Sales Tax”) is the sole source of funding of the payments of principal and interest due on COFINA’s bonds.
2. The Dedicated Sales Tax has been sufficient to meet COFINA’s scheduled payments of principal and interest on its debt on a non-accelerated basis.
3. Prior to filing the COFINA Title III case on May 5, 2017, the Oversight Board issued a restructuring certificate for COFINA. Prior to the issuance of that restructuring certificate, Governor Ricardo Rosselló Nevares wrote to the Oversight Board’s chairman stating that the Governor, in coordination with AAFAF, advised the Oversight Board that COFINA desires to effect a plan to adjust its debts and hereby requests that the Oversight Board petition that COFINA enter into Title III of PROMESA for the purposes of adjusting COFINA’s debts to a sustainable level consistent with the Fiscal Plan.¹
4. Pursuant to a process initially proposed by the Oversight Board, a duly authorized agent of the Oversight Board representing the interests of the Commonwealth (the “Commonwealth Agent”) was appointed by the Court to advocate for the Commonwealth in litigation concerning ownership of the Dedicated Sales Tax. According to a stipulation approved by the Court, the Commonwealth Agent has filed a complaint in which it contends that the Dedicated Sales Tax is the property of the Commonwealth.
5. If the Dedicated Sales Tax is judicially determined to belong to COFINA, the amount of revenues available under the Fiscal Plan would be reduced by approximately \$753 million in fiscal year 2018, and the Commonwealth would be unable to meet some of its obligations (without including any amounts for debt service) under the terms of the Fiscal Plan.
6. If the Dedicated Sales Tax is judicially determined to belong to COFINA, the amount of revenues available under the Revised Fiscal Plan would be reduced by approximately \$358 million in fiscal year 2018, and the Commonwealth would be unable to meet some of its obligations (inclusive of scheduled debt service) under the terms of the Revised Fiscal Plan.
7. If the Dedicated Sales Tax is judicially determined to belong to COFINA, the amount of revenues available under the Fiscal Plan or the Revised Fiscal Plan would be reduced in fiscal years 2019, 2020, 2024, 2025, and 2026 by amounts that would render the

¹ For purposes of this Stipulation, the term “Fiscal Plan” refers to the Fiscal Plan for the Commonwealth dated March 13, 2017, as corrected on April 18, 2017, and the term “Revised Fiscal Plan” refers to the revisions made through the Oversight Board’s Unanimous Written Consent dated May 31, 2017, as attached to a June 2, 2017 letter from the Oversight Board to the Governor of Puerto Rico, the Speaker of the Senate of Puerto Rico, and the Speaker of the House of Representatives of Puerto Rico. This Stipulation does not reflect or address any changes in actual numbers, or in projections or forecasts, in any other documents or data compilations.

Commonwealth unable to meet some of its obligations (without including any amounts for debt service) under the terms of the Fiscal Plan or the Revised Fiscal Plan during those fiscal years. Thus, according to the revenue and expense assumptions set forth in the Fiscal Plan and the Revised Fiscal Plan, some portion of the Dedicated Sales Tax will be needed for expenses other than debt service on COFINA's bonds in fiscal years 2019, 2020, 2024, 2025, and 2026.

8. Since COFINA was established through May 1, 2017, COFINA has made all scheduled payments of principal and interest on its debt.
9. The money in the possession of the COFINA trustee, Bank of New York Mellon ("BNYM"), was sufficient to meet COFINA's scheduled payments, through at least July 31, 2017, of principal and interest on a non-accelerated basis.
10. Since COFINA was established through the end of Fiscal Year 2017, the total amount of sales-and-use tax collected for each fiscal year has exceeded the annual amount of Dedicated Sales Tax.
11. The Oversight Board is not currently aware of any forecasts, generated either by itself or by the government of the Commonwealth, specifically predicting that future sales-and-use tax collections for any fiscal year will be less than the annual Dedicated Sales Tax amount.
12. Since COFINA was established to the present, the Dedicated Sales Tax has been transferred to and held by BNYM.
13. The amount of money available for all debt service in the Fiscal Plan and the Revised Fiscal Plan is less than the amount of scheduled principal and interest payments on COFINA debt in fiscal years 2018, 2019, 2020, 2024, 2025, and 2026.
14. The Oversight Board is not aware of any statements made by COFINA to AAFAF, the Commonwealth, or the Oversight Board (or any member thereof) objecting to or opposing:
 - a. the filing of the Title III petition on its behalf;
 - b. the treatment of COFINA and/or the Dedicated Sales Tax in the Fiscal Plan, the Revised Fiscal Plan, the Fiscal Plan Compliance Law, or the "Government of Puerto Rico proposal under Title VI of PROMESA," dated April 24, 2017 and publicly disclosed by AAFAF on April 28, 2017 (the "Title VI Proposal");
 - c. the Oversight Board's certifications of the Fiscal Plan or the Revised Fiscal Plan.
15. The Oversight Board has not, as of September 5, 2017, "prevent[ed] the enforcement or application" of the Fiscal Plan Compliance Law pursuant to section 204(a)(6) of PROMESA.

16. The Oversight Board members do not currently recall having direct communications with COFINA or creditors regarding the Fiscal Plan, the Revised Fiscal Plan, the Fiscal Plan Compliance Law, the Explanatory Statement, or the Title VI Proposal, all in relation to COFINA, except to the extent that (i) one or more Oversight Board members might have attended meetings that their counsel held with creditors' representatives between December 2016 and February 2017 and (ii) one or more Oversight Board members attended meetings with creditors in mediation sessions involving Judge Gropper and Judge Houser's mediation team.